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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JAN 30 1998

In the Matter of)
)
Consumer Federation of America,) RM 9210
International Communications)
Association and National Retail)
Federation Petition for Rulemaking)
regarding Access Charge Reform and)
Price Cap Performance Review for)
Local Exchange Carriers)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") submits these Comments on the Petition for Rulemaking ("Petition") submitted herein by the Consumer Federation of America ("CFA"), the International Communications Associations ("ICA") and the National Retail Foundation ("NRF") (collectively "Petitioners").¹ That Petition urges the Federal Communications Commission ("Commission") to commence a rulemaking proceeding for the purpose of adopting rules to prescribe cost-based interstate access charges based on forward-looking economic costs.² For the reasons discussed below, the Commission should deny the Petition.

¹ Public Notice, Office of Public Affairs Reference Operations Division Petitions For Rulemaking Filed, Report No. 2246, rel. Dec. 31, 1997. Petition for Rulemaking filed Dec. 9, 1997.

² Petition at 9.

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ARGUMENT: THE COMMISSION SHOULD REJECT THE PETITION FOR RULEMAKING, WHICH IS NOTHING MORE THAN AN UNTIMELY PETITION FOR RECONSIDERATION OF THE COMMISSION'S ACCESS REFORM ORDER

In a thinly-disguised -- and untimely -- Petition for Reconsideration, Petitioners have asked the Commission to reject its "market-based" approach to developing economically-efficient access charges. They would have the Commission disavow the market-based approach before the Commission has had an opportunity to implement it.

The fundamental premise of the Petition is the notion that the competitive benefits promised consumers by the Telecommunications Act of 1996 have not materialized and never will.³ Thus, because some of the Commission's rulemaking initiatives have been reversed by the Court of Appeals, Petitioners would run up a white flag of surrender. They would have the Commission revert to a prescriptive approach, by which the Commission would impose the benefits of competition by regulatory fiat, thereby helping to ensure that competition indeed never does take root.⁴

Though Petitioners claim to seek a rulemaking, they have plainly filed a belated Petition for Reconsideration of the Commission's Access Reform Order.⁵ In

³ Petitioners' predictions of the demise of local competition are premature, at best. On January 27, 1998, U S WEST's MediaOne subsidiary announced the roll out of facilities-based residential service in the Atlanta area; the service will soon be available to 150,000 homes. MediaOne will begin to provide residential service in other cities later in the year.

⁴ Lowering the incumbent LECs' access rates will leave less room for competitors to enter the market profitably thus reducing the incentive for competitive entry.

⁵ In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line

that Order, the Commission determined to adopt a “market-based” approach, under which local competition will gradually drive the incumbent LECs’ access charges toward economic cost.⁶ But the Commission postponed to a further Order (which it has not yet released) the definition of the precise contours of this approach.⁷

Less than seven months after release of the Access Reform Order, Petitioners urge the Commission to abandon a course it has not yet implemented. Though Petitioners claim otherwise, nothing has changed in the interim. The Court of Appeals decisions bemoaned in the Petition represent no change. The pricing rules at issue in those proceedings had already been stayed when the Commission issued its Access Reform Order. Indeed, the Comments of the only one of the Petitioners to participate in that proceeding⁸ specifically complained that the stay precluded reliance on unbundled network elements to drive down access rates.⁹ The rules stayed by the Court of Appeals have now been vacated by that Court, but that represents no material change over the situation as it existed when the Commission

Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 7 Comm. Reg. (P&F) 1209 (1997) (“Access Reform Order” or “Order”); appeals pending sub nom. Southwestern Bell Telephone Company v. FCC, Nos. 97-2618, et al. (8th Cir.); on recon. 11 FCC Rcd. 10119, Second Order on recon. FCC 97-368, rel. Oct. 9, 1997, erratum rel. Nov. 13, 1997, pet. for recon. pending, appeals pending sub nom. AT&T v. FCC, Nos. 97-1678, et al. (D.C. Cir.).

⁶ Access Reform Order at 1278-279 ¶¶ 262-63.

⁷ Id. at 1280 ¶ 270.

⁸ The ICA filed Comments on Jan. 29, 1997 (but not Reply Comments) in the Access Reform proceeding (“Comments of the ICA”); the other Petitioners did not participate. See Access Reform Order, 7 Comm. Reg. (P&F) Appendix A at 1325-327.

⁹ Comments of the ICA at 2-4; see Access Reform Order, 7 Comm. Reg. (P&F) Appendix B at 1361 ¶ 144.

issued its Order: the rules were not in effect then and they are not in effect now. Nothing in that regard has changed.

Petitioners did not seek reconsideration of this issue,¹⁰ and they did not appeal the Access Reform Order. Their Petition here is nothing more than an attempt to rehash claims the Commission has already considered,¹¹ and the Commission should reject it for that reason alone.¹²

The Commission has considered the possibility that its market-based approach would not move access charges closer to economic cost.¹³ The Commission has indeed required the incumbent LECs to file forward-looking cost studies not later than February 8, 2001,¹⁴ which will enable the Commission to prescribe cost-based access prices, if it finds that necessary. But for the Commission to reach that

¹⁰ ICA filed a Petition for Reconsideration regarding calculation of the Presubscribed Interexchange Carrier Charge for Centrex customers. ICA Petition for Reconsideration filed July 14, 1997.

¹¹ The Petition herein is nothing more than an expanded version of the arguments made in ICA's Comments, which essentially argued that, so long as the Commission's Part 51 rules were stayed, the Commission could not rely on unbundled network elements to drive down access rates. "[T]he simple fact is that only with responsible efforts to force monopoly prices closer to cost (a process that the Commission refers to as a prescriptive approach) will the American telephone customer be assured [of] benefiting from the pro-competitive goals of our congress." Comments of the ICA at 4.

¹² To be sure, nothing precludes the Commission from commencing a new rulemaking immediately on the heels of a completed rulemaking on the same subject. But by the same token, nothing compels the Commission to launch the rulemaking requested by the Petitioners.

¹³ The Petition claims the Commission determined to set access charges "at" forward-looking economic cost. The cited paragraph, however, states only that access services should be priced "in accordance with" economic cost. Access Reform Order, 7 Comm. Reg. at 1280 ¶ 269. Prices will be set at economic cost only in a perfectly competitive market, which does not exist in the real world.

decision now is premature.

Contrary to the implicit assumption of the Petition, the Commission cannot simply prescribe access rates at some notion of economic cost without first addressing the reform of the separations process and issues surrounding the incumbent LECs' embedded costs. The separations process today assigns to the interstate jurisdiction revenue requirements in excess of the cost of providing interstate services.¹⁵ Until that is remedied, prescribing rates to reflect some lesser level of costs would raise obvious and serious confiscation issues. In the same vein, moving access charges to cost would eliminate the universal service support now embedded in those charges. This issue, too, must be addressed before the Commission can consider Petitioners' request. Finally, the Commission has not yet adequately addressed the incumbent LECs' recovery of investment associated with under-depreciated plant. The Commission must resolve all these issues before it can consider attempting to prescribe access charges on the basis of economic cost.

Finally, we cannot disregard the irony -- no doubt unintended -- in the Petitioners' plea for a prescriptive approach to setting access rates. If the current rate structure and rate levels do not reflect a prescriptive approach, we cannot imagine what such a system might look like. Not a week after the Commission determined to adopt its (still undefined) "market approach," it dramatically

¹⁴ Id. at 1279-280 ¶ 267.

¹⁵ See id. at 1267 ¶ 213, 1270 ¶ 225.

increased the productivity factor for the price cap LECs," thereby ensuring a continuing, rapid decrease in the access rates paid to the price cap LECs. The propriety of that prescription has yet to be finally resolved by the courts, but whatever the outcome, no one can claim it is the product of market forces.

Access rates are the product of a Commission prescription, and any notion that the Commission should "move to" a prescriptive approach is ludicrous.

For the reasons stated, the Commission should deny the Petition.

Respectfully submitted,

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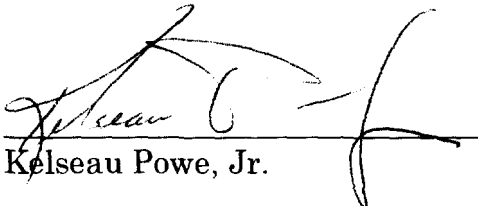
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January 30, 1998

¹⁶ In the Matter of Price Cap Performance Review for Local Exchange Carriers, Access Charge Reform, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd. 16642 (1997); pets. for recon. pending; appeals pending sub.nom. United States Telephone Association v. FCC, Nos. 97-1469, et al. (D.C. Cir.).

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 30th day of January, 1998, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served, via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


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Last Update: 1/30/98